

Roger Williams University Law Review

Volume 28
Issue 3 *Vol. 28, No. 3: Summer 2023*

Article 23

Summer 2023

State v. McGuire, 273 A.3d 146 (R.I. 2022)

Madeleine Fenderson

Candidate for Juris Doctor, Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/rwu_LR



Part of the [Privacy Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Fenderson, Madeleine (2023) "State v. McGuire, 273 A.3d 146 (R.I. 2022)," *Roger Williams University Law Review*: Vol. 28: Iss. 3, Article 23.

Available at: https://docs.rwu.edu/rwu_LR/vol28/iss3/23

This Survey of Rhode Island Law is brought to you for free and open access by the School of Law at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized editor of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Criminal Procedure. *State v. McGuire*, 273 A.3d 146 (R.I. 2022). The approval of a wiretap order is a significant infringement of privacy by which the General Assembly has determined should only be granted by the Presiding Justice of each case with few exceptions per Rhode Island General Laws § 8-3-4.¹ Unlawful wiretap approvals violate R.I.G.L. § 12-5.1-3 (the Wiretap Act); thus, any information intercepted is subject to suppression.²

FACTS AND TRAVEL

In November 2018, the state indicted forty-one defendants of a motorcycle gang on over 424 criminal counts.³ Beginning May 18, 2017, Superior Court Presiding Justice Alice B. Gibney (Presiding Justice) entered seven wiretap orders following application for orders from an Assistant Attorney General.⁴ On July 6, 2017, the Presiding Justice, anticipating medical leave, issued an administrative order pursuant to R.I.G.L. § 8-3-4 to designate her duties to Justice Robert D. Krause beginning July 13, 2017.⁵ However, this designation contradicted a prior oral statement given by the Presiding Justice to Justice Melanie Wilk Thunberg stating that the Presiding Justice's duties pertaining to wiretap orders in present cases would be designated to Justice Thunberg during the time of her medical leave.⁶ The Presiding Justice also notified the Assistant Attorney General to direct further wiretap applications to Justice Thunberg.⁷

Justice Thunberg issued several wiretap orders pertaining to the investigation between August 2, 2017, and May 2018, despite

1. R.I. GEN. LAWS § 8-3-4.

2. *Id.* §12-5.1-3.

3. *State v. McGuire*, 273 A.3d 146, 150 (R.I. 2022).

4. *Id.* at 151.

5. *Id.*

6. *Id.* (reasoning that Presiding Justice knew that the dispute involved firearms and Justice Krause was responsible for the Superior Court's Gun Calendar).

7. *Id.*

Presiding Justice returning full-time in January of 2018.⁸ McGuire, joined by twenty-four other defendants, filed a motion to suppress on December 5, 2018, for “any and all wire, electronic, or oral communications seized during the . . . investigation”.⁹ McGuire reasoned that Justice Thunberg was not authorized pursuant to the Wiretap Act to grant wiretap orders pertaining to the investigation.¹⁰

The Trial Court granted the Motion to Suppress all wiretap orders issued after July 13, 2017, when Presiding Justice delegated her duties to Justice Krause.¹¹ The Trial Justice reasoned first that the Wiretap Act required applications for wiretaps be made to Justice Krause since he was the “Acting Presiding Justice.”¹² Second, the Presiding Justice’s oral designation of her wiretap duties to Justice Thunberg violated the Wiretap Act.¹³ Third, Justice Thunberg’s wiretap orders violated the Wiretap Act, and the violation rendered the wiretap orders made after July 13th null and void, and suppression of that evidence was appropriate.¹⁴

The state appealed to the Rhode Island Supreme Court.¹⁵

ANALYSIS AND HOLDING

Upon review of the Motion to Suppress, the Rhode Island Supreme Court reviewed this dispute de novo. Since this Court is addressing the interpretation of the Wiretap Act, questions of statutory interpretation are reviewed de novo to “give effect to the purpose of the act as intended by the Legislature.”¹⁶ On appeal, the state argued that (1) the Presiding Justice’s designation of wiretap duties to Justice Thunberg was within her statutory authority under R.I.G.L. § 8-3-4, (2) the trial court erred in concluding that all wiretap applications must have been sent to Justice Krause

8. *Id.*

9. *Id.*

10. *Id.* at 151–52.

11. *Id.* at 152.

12. *Id.* (finding that the Presiding Justice did not have the statutory authority to disqualify Justice Krause from receiving and ordering wiretaps in her absence).

13. *Id.*

14. *Id.*

15. *Id.* at 150.

16. *Id.* at 152 (citing *State v. Oster*, 922 A.2d 151, 160 (R.I. 2007)).

pursuant to the Wiretap Act, and (3) even if Justice Thunberg's wiretap applications and orders violated the Wiretap Act, the violation does not warrant suppression of the evidence.¹⁷ The Supreme Court rejected the state's arguments and affirmed the Superior Court ruling on the following grounds.

A. *Lack of Statutory Authority to Issue Wiretap Orders*

The Court found that Justice Thunberg did not have the statutory authority to issue wiretap orders because the Wiretap Act specifically mandates that *only* the Acting Presiding Justice may receive applications or issue wiretap orders when a Presiding Justice disqualifies himself.¹⁸ R.I.G.L. § 8-3-4 allows a Presiding Justice to designate any associate justice to perform the Presiding Justice's duties during their absence.¹⁹ However, the Wiretap Act governs who may issue or receive wiretap orders. Because the Wiretap Act is the relevant statute governing the designation of wiretap orders, the Presiding Justice did not have the authority to designate wiretap orders under R.I.G.L. § 8-3-4. Rhode Island rules governing the interception of wire communications offer more protection for the party's privacy than typical search warrants.²⁰ Courts have deferred to the federal wiretap act (nearly identical to Rhode Island's Wiretap Act) to determine if parties are authorized to receive and order wiretaps.²¹ Since the language of the Wiretap Act, specifically §12-5.1-3 and §12.5.1-4(a), mandates that a senior associate justice may authorize or issue wiretap orders during the time of a Presiding Justice's absence, Justice Krause was the only Justice statutorily authorized to issue the wiretap orders after July 13.²² Since Justice Krause was the only justice authorized to issue the wiretaps, Justice Thunberg lacked the statutory authority to issue the wiretaps between August 2, 2017, and May 2018, despite the Presiding Justice's oral request. Since the wiretap orders were

17. *Id.* at 153.

18. *Id.* at 156–57.

19. *Id.* at 157; *see also* R.I. GEN. LAWS § 8-3-4.

20. *See McGuire*, 273 A.3d at 154 (citing *State v. Sitko*, 460 A.2d 1, 3 (R.I. 1983)).

21. *Id.*; *see also* *United States v. Giordano*, 416 U.S. 505, 513–14 (1974).

22. R.I. GEN. LAWS §§ 12-5.1-3 and 12.5.1-4(a).

issued by someone without statutory authority to do so, the wiretap orders violated the Wiretap Act.

B. *Wiretap Act Violation Surmounted to an Unlawful Interception*

The Court found that evidence resulting from wiretap orders that violate the Wiretap Act must be suppressed on the grounds that the evidence was unlawfully intercepted.²³ Courts have held that approval of a wiretap authorization without statutory authority violates the federal wiretap act, and the violation surmounts to an “unlawful interception.”²⁴ The Court in *Giordano* reasoned that a statute limiting who may issue or authorize wiretap orders is “central” to the statute’s purpose in limiting the use of wiretap orders in investigations and protecting defendants’ private communications.²⁵ Violations of the Wiretap Act may still be considered lawful interceptions when the state can demonstrate that the “statutory purpose has been achieved despite... a violation.”²⁶ However, the state failed to meet its burden to prove that the statute’s goals were still achieved.²⁷

The Court has held that the issuance of a search warrant (with fewer privacy safeguards than wiretaps) by a judicial officer without statutory authority violated the purpose of the “procedural safeguards . . . [that] have been developed in order to guarantee the right of the people to be secure in their persons, houses, papers, and effects.”²⁸ In *State v. Nunez*, the Rhode Island Supreme Court held that evidence gained from a search where the search warrant was signed by an unauthorized and retired judge must be suppressed.²⁹ The Court reasoned that since the search warrant was signed by someone with neither statutory nor de facto authority, the search violated the procedural safeguards protecting unlawful searches and the lower court’s conviction had to be quashed.³⁰

23. *McGuire*, 273 A.3d at 159.

24. *See id.* (citing *Giordano*, 416 U.S. at 514–28).

25. *See id.* at 159–60 (citing *Giordano*, 416 U.S. at 527–28).

26. *Id.* at 160 (citing *United States v. López*, 300 F.3d 46, 65 (1st Cir. 2002)).

27. *Id.*

28. *Id.* (citing *State v. Nunez*, 634 A.2d 1167, 1171 (R.I. 1993)).

29. *Nunez*, 634 A.2d at 1167.

30. *See id.* at 1167.

The Court here held that the state did not meet its necessary burden to demonstrate that the goals of the Act were met despite Justice Thunberg violating the Wiretap Act.³¹ The Court reasoned that since wiretaps have a higher level of protection for privacy than the search warrants had in *Nunez*, a violation of the procedural safeguard of the Wiretap Act violated the purpose of the statute.³² Because the state did not meet this burden, the evidence resulting from Justice Thunberg's wiretap orders that violated the Wiretap Act must be suppressed. The Court affirmed the Superior Court's holding by granting the defendant's Motion to Suppress.³³

COMMENTARY

Through this decision, the Rhode Island Supreme Court reinforced citizens' right to privacy and enforced significant controls on the use of wiretap evidence in criminal prosecutions. Justice Thunberg arguably had the de facto authority to issue the wiretap orders and had no conflict of interest; however, the Court still upheld the strict statutory standards for administering wiretap orders.

Although this dispute in *State v. McGuire* involved wiretap orders, R.I.G.L. §12-5.1 also protects unlawful seizure of electronic communications, including anything transmitted via wire, radio, electromagnetic, photoelectronic, or photo-optical systems.³⁴ Courts in Rhode Island have held that these protected electronic communications include online accounts, email, and instant messages under the Act.³⁵ Since this dispute reinforced the strict procedural standards for who may authorize and order wiretaps, courts may also reinforce these strict high procedural standards to all electronic communications, including emails, text messages, or instant messages. As we enter an age where many communications are shared over the internet and electronically rather than over the phone, this Court's reinforcement of the Wiretap Act's strict procedural standards will likely extend to online communications. As a result, courts may look at the procedure for requesting electronic

31. *McGuire*, 273 A.3d at 160–61.

32. *Id.*

33. *Id.* at 162.

34. R.I. GEN. LAWS § 12-5.1-1-5.

35. See *Williams v. Stoddard*, No. PC 12-3664 2015 R.I. Super. LEXIS 58, at *58 (R.I. Sup. Ct. Feb. 11, 2015).

communications as evidence with more scrutiny and suppress evidence that was obtained improperly.

CONCLUSION

The Supreme Court in Rhode Island held that a wiretap order administered by someone other than a designated justice is a violation of the Wiretap Act and constitutes an unlawful interception. The Court held that the goal of the Wiretap Act is to preserve the “procedural safeguards” for wiretap and electronic communication evidence, and wiretap orders by a justice who is not authorized should be suppressed. Through this decision, the Supreme Court of Rhode Island reinforced the procedural safeguards for citizen’s right to privacy for their communications over the phone or electronically.

Madeleine Fenderson